IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10428 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASILABEN B RAJGURU - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1,MR BIREN A VAISHNAV for Petitioner(s) : 1,
MS KIRAN PANDEY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR JR NANAVATI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed

for an appropriate writ, direction and/or order directing the respondents to give the benefit of her services rendered from 5.1.1965 to 18.8.1969 under the District Education Committee, Bhavnagar for the purpose of pensionary benefit.

2. It is the contention on behalf of the petitioner that she was appointed as an Assistant Teacher in the Primary School No. 42 under the Administrative Officer, District Education Committee, Bhavnagar and she continued to serve till 18.8.1969. That on 19.8.1969, she joined as Primary Teacher under the Nagar Prathmik Shikshan Samiti after resigning from the previous post without any break in service. It is the case on behalf of the petitioner that she was to superannuate on 31.12.2000, she made a representation on 16.11.1995 that as she was to retire in about 4 years, her services from 4.1.1965 to 18.8.1969 under the District Education Committee, Bhavnagar and services from 19.8.1969 to the date of superannuation be treated as continuous for the purpose of pension. It appears that the Administrative Officer of Nagar Prathmik Shikshan Samiti by letter dated 1.1.1996 addressed to the petitioner forwarded a communication dated 17.12.1994 of the Director of Primary Education informing that those Teachers of the District Panchayat and the Nagar Prathmik Shikshan Samiti, who leave Government service on

resignation shall not be entitled to pension. It is the case on behalf of the petitioner that the State Government has issued a resolution dated 24.1.1967 whereby, the benefit of past services except that of seniority is given to an employee when there is no break in service, who is appointed from one department to the other department through recognized agency. The petitioner has also relied upon the resolution dated 23.12.1987, which provides that in case of Government recognized non-Government Education Institutions where pension scheme is in force their previous administrative service rendered in the Education Department or in Local Self Government Institutions like District School Boards, School Committees, Education Committees of Municipalities/ Municipal Corporation/ Municipal Corporation should be counted for the purpose of pension. Therefore, it is submitted that the decision of the respondents in not extending the benefit of past service for the purpose of pension is arbitrary and de-hors the aforesaid Government Resolutions and therefore, it is requested to allow the present Special Civil Application. He has relied upon the decision of this Court dated 29.11.2006 rendered in Special Civil Application No.7880 of 1997 as well as another decision of this Court dated 6.8.1999 rendered in Special Civil Application No.8580 of 1989 whereby, the learned Single Judge of this Court has directed the department

to consider the past service of the Teacher for the purpose of pension.

3. Ms. Kiran Pandey, learned AGP while relying upon Rule – 25 and Rule – 33 of the Gujarat Civil Services (Pension) Rules; 2002 has opposed the present Special Civil Application and has submitted that considering Rule – 33 of the Rules, the petitioner is not entitled to the benefit of her past service while she was in service in District Education Committee, Bhavnagar and therefore, it is requested to dismiss the present Special Civil Application.

4. Identical questions came to be considered by this Court in Special Civil Application No.7880 of 1997 and relying upon the decision of this Court dated 6.8.1999 rendered in Special Civil Application No.8580 of 1989 as well as relying upon the Government Resolutions dated 31.1.1990 and 28.8.1990, this Court has allowed the aforesaid Special Civil Application and has directed the respondents to consider the past service of the petitioner while he was in service in Education Department and for the purpose of pension, has directed the respondents to re-fix the pension accordingly.

5. For the reasons stated in the decision dated 29.11.2006 rendered in Special Civil Application No.7880 of 1997, this petition is required to be

allowed and is accordingly, allowed. The respondents are directed to consider the period from 5.1.1965 to 18.8.1969 rendered under the District Education Committee, Bhavnagar, for the purpose of her pensionary benefits and the respondents are directed to re-fix the pension of the petitioner accordingly. The said exercise to be done within a period of 3 months from the date of receipt of this order and difference, if any, be paid to the petitioner within a period of 2 months thereafter.

6. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.SHAH, J.]

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